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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.S. et al., Persons  
Coming Under the Juvenile  
Court Law.

B291997  
(Los Angeles County  
Super. Ct. No.  
18CCJP03136)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

G.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County, Kim L. Nguyen, Judge. Affirmed.

John P. McCurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel, David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

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G.S. (mother) appeals from the juvenile court's August 9, 2018 orders declaring minors M.S., Katherine S., W.S., and Isaac S. dependents of the court under Welfare and Institutions Code section 300, subdivisions (a) on one count, (b) on two counts, and (j) on two counts.<sup>1</sup> Mother contends substantial evidence does not support the juvenile court's jurisdictional findings. Because we find substantial evidence in the record to support the juvenile court's findings, we affirm the juvenile court's orders.

### **BACKGROUND**

Mother and J.V. (father) have three children, M.S. born in 2008, Katherine S. born in 2009, and W.S. born in 2013.<sup>2</sup> Mother had a fourth child, Isaac S. in 2017, with Alfonso Z. (boyfriend).<sup>3</sup>

#### **A. The Baby Rattle Incident**

On April 23, 2018, Katherine and her younger cousin were playing when they began to argue about a toy; Katherine hit her

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise noted.

<sup>2</sup> Mother also has an adult son who lives in Guatemala. Mother declined to respond when asked about the adult son's father.

<sup>3</sup> At the detention hearing on May 17, 2018, the juvenile court found father to be the presumed father of Isaac S. under Family Code section 7611, subdivision (b).

cousin. Mother separated the children. After the cousin left, mother became angry with Katherine and began yelling. Mother then hit Katherine in the head with a rattle a Los Angeles Sheriff's Department (LASD) deputy described as "a baby toy the size of a bowling ball." Katherine's head started to bleed, so mother told her to shower to wash her head and hair and to stop the bleeding. Mother then told Katherine to put a hat on to hide the wound because the family had to retrieve W.S. from school.

The Los Angeles County Department of Children and Family Services (DCFS) received a report about the incident on April 25, 2018, and LASD dispatched deputies to the family's home. As the deputies interviewed Katherine, "mother came out of the bedroom crying and in Spanish pleaded with [Katherine] to say it was an accident." Two days after the incident, the wound had a one-inch scab.

When the deputies interviewed mother, she said that Katherine had injured herself, but could not explain how. Mother *then* said that Katherine and the cousin were arguing and Katherine "realized that her head was bleeding." After questioning about how Katherine's head could bleed because of an argument, mother "stated that [mother] might have been holding the toy while she was yelling at [Katherine] and might have accidentally hit her on the head with it." The deputies contacted father to care for the children and arrested mother.

When mother was interviewed a couple of months after the incident (in anticipation of the jurisdiction and disposition hearing), mother admitted that she grabbed the closest thing to Katherine and hit her on the head with it. Mother claimed she "overreacted," but that hitting Katherine in the head did not constitute abuse. Mother said: "I had never hit [Katherine]

before. This was the first time something like this happen[ed]. I didn't mean for it to go this far. It wasn't even very hard. I don't even know why [Katherine] started bleeding but she did."

Neither the officers who visited the home nor case workers assigned to the case reported any other injury to any child. One of the children reported that mother "spanked her on the buttocks with objects," but declined to provide any more information because she did not want to get mother in trouble.

## **B. The Boyfriend and Domestic Violence**

At an interview on June 27, 2018, mother reported that she began a "casual relationship" with boyfriend in 2015. When asked about boyfriend, mother lied. She told DCFS that boyfriend left as soon as he found out mother was pregnant with his son, and that she never heard from him again. She said she had no identifying information for boyfriend, no contact information, and that he had never met their child, Isaac. It appears mother said little during her June 2018 interview about her interactions with boyfriend that was accurate.<sup>4</sup>

The family's only prior interaction with DCFS was a referral about boyfriend. In January 2016, DCFS was contacted because the (then three) children reported to father that boyfriend pulled a knife on mother and that the two fought frequently. "Father also said that . . . boyfriend has been threatening the father when he exchanges children for a visit

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<sup>4</sup> It *may* be accurate that boyfriend initially left when he found out mother was pregnant. Boyfriend attacked and threatened to kill mother on July 4, 2016, and mother reported to responding officers that boyfriend had already moved out of her home by that time. Isaac was born on March 24, 2017.

and . . . boyfriend keeps thinking father is making a pass at mother.” DCFS took no action.

In July 2016, however, boyfriend showed up at mother’s home and threatened to stab her if she did not open the door. Boyfriend somehow got into mother’s home and grabbed mother’s mobile phone, with which she was attempting to call police, cutting her face with it. Boyfriend stole the phone’s memory card, threw the phone on the ground, and left, telling mother he would be back to stab her. Mother told the responding officers that she and boyfriend had a history of domestic violence, and that he had hit her in the past.

In November 2016, boyfriend pled no contest to a single count of stalking under Penal Code section 646.9, subdivision (a) and was sentenced to two years in state prison. The trial court in boyfriend’s criminal matter issued a domestic violence protective order for mother that will expire in 2026. In 2017, boyfriend was deported.

Boyfriend was back in the United States by June 11, 2018. That day, he showed up at mother’s house and told her that he did not care that he was violating the 2016 protective order. Boyfriend began yelling at another adult at mother’s home, and “challenged him to a fight several times.” Boyfriend eventually left the property.

He returned again in 2018. Father was at the home with the children (mother was not home) when boyfriend kicked the door and sent father threatening text messages. Father reported that mother is in contact with boyfriend, contrary to all of her assertions to DCFS. Boyfriend reportedly sent mother text messages expressing his displeasure with father living in mother’s home. And mother told father that boyfriend lives in

another state and that she plans to move herself and Isaac to be with boyfriend “once the DCFS case closes.”

Multiple times during her interview, mother explained that she felt she should “take[her] kids to Guatemala” to escape the DCFS investigation and to avoid problems regarding giving DCFS information about boyfriend.

### **C. Procedural Background**

Based on its investigation, DCFS detained the children and filed a section 300 petition on May 16, 2018. The petition contained allegations under section 300, subdivisions (a), (b)(1), and (j). Each of the three counts (a-1, b-1, and j-1) alleged: “On or about 04/23/2018, the children[’s mother] . . . physically abused the child Katherine by striking the child’s head with a rattle, inflicting bleeding to the child’s head. Such physical abuse was excessive and caused the child unreasonable pain and suffering. Such physical abuse of the child by the mother endangers the child’s physical health and safety, and places the child, and the child’s siblings . . . at risk of serious physical harm, damage, danger and physical abuse.”

At the detention hearing on May 17, 2018, the juvenile court ordered the children detained and released to the parents’ home. The court also found father to be the presumed father of Isaac S. under Family Code section 7611, subdivision (b).

After learning that mother lied about boyfriend and learning more about boyfriend’s history with father, mother, and the children, DCFS filed a first amended petition on July 18, 2018 that added counts a-2, b-2, and j-2, and an additional count, g-1, under section 300, subdivision (g). Counts a-2, which the juvenile court dismissed, b-2, and j-2 each stated: “The children[’s mother . . . and [boyfriend] have a history of engaging

in violent altercations. On or about July 2016, [boyfriend] forcibly entered the mother's home and took the mother's cell phone from her causing a laceration to the mother's right cheek. [Boyfriend] threatened to stab the mother, threw the mother's cell phone on the ground and stole the mother's cell phone memory card. On July 13th, 2016, [boyfriend] was arrested for Inflict Corporal Injury Spouse/Cohabitant, Robbery, and Threaten Crime with Intent to Terrorize. Further [boyfriend] has a criminal conviction for Stalking [mother] and served 2 years in state prison. On 06/11/2018, [boyfriend] violated a Los Angeles County Criminal Protective Order restraining [boyfriend] from having contact with the mother. Such violent altercations on the part of [boyfriend] against the children's mother endangers the children's physical and emotional health and safety and places the children at risk of physical and emotional harm, damage and danger." Count g-1, which the juvenile court dismissed, alleged: Boyfriend "failed to provide the child with the necessities of life including food, clothing, shelter and medical treatment. . . . Such failure to provide for the child on the part of [boyfriend] endangers the child's physical and emotional health, safety and well being and places the children at risk of physical and emotional harm and damage."

At the adjudication and disposition hearing on August 9, 2018, the juvenile court sustained counts a-1, b-1, b-2, j-1, and j-2 and dismissed counts a-2 (as not being appropriately pled as a section 300, subdivision (a) count) and g-1. Mother filed a timely notice of appeal challenging the juvenile court's jurisdictional findings.<sup>5</sup>

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<sup>5</sup> Jurisdictional findings under section 300 are not appealable, but are reviewable on appeal from a dispositional

## DISCUSSION

Mother contends there is insufficient evidence to support the juvenile court's determination that the children are persons described by section 300, subdivisions (a), (b)(1), and (j). Mother contends the physical abuse allegations do not show that Katherine suffered serious physical harm or that any of the minors was at substantial risk of future harm, but rather that the incident was a single occurrence that is not likely to recur. She further contends that the domestic violence issues with boyfriend were more than two years ago, that mother appropriately contacted the police when boyfriend violated the restraining order, and that he had no role in the lives of any of the minors. We disagree with mother. We find substantial evidence in the record to support each of the juvenile court's jurisdictional findings, and we will affirm.

“We review the trial court's findings for substantial evidence. [Citation.] We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence. [Citation.] [¶] Substantial evidence must be of ponderable legal significance. It is not synonymous with ‘any’ evidence. [Citation.] The evidence must be reasonable in nature, credible, and of solid value. [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the

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order. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393, fn. 8, abrogated on another ground in *In re R.T.* (2017) 3 Cal.5th 622.)



finding or order.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

The common threads that permeate this case all stem from mother’s dishonesty with every investigator from every agency that came to her home, her lack of candor, and her coaching the children to practice the same dishonesty and lack of candor with investigators. Mother’s pattern of deception in this case is coupled with the injury she caused Katherine on one hand and her protection of and continuing interaction with her abuser on another.

**A. Katherine’s Injury**

Mother contends the injury that resulted from her hitting her daughter in the head “does not amount to serious physical harm as defined by [section 300,] subdivision (a).” Citing investigators’ observations, mother claims that “[t]he day after the incident, sheriff’s deputies described the injury as a ‘one inch scab.’” Mother also cites a social worker’s observation that the injury was a “scratch.”

Mother’s argument is consistent with her statements minimizing Katherine’s injuries and the array of misrepresentations she made about how Katherine was injured. But mother’s timeline is not consistent with the record.

Investigators did not see Katherine the day after the incident. They saw her *two* days later. And what they described was a bump on her head and a one-inch scab on top of the cut. The social worker who described the “scratch” didn’t see Katherine until *seven* days after mother hit the child. We find that serious; the injury was still visible on the child’s face a *week* after mother inflicted it.

Moreover, in this case Katherine's injury and the risk of future harm to all of the children are inseparably linked by mother's deception. The children's safety should not turn on mother's ability to cover up her wrongdoing or to persuade her children into lying long enough for the injuries she inflicts to heal to the point they no longer appear serious.

Mother burst into the room where deputies were interviewing Katherine and tearfully begged her to lie to them. Mother covered up her child's injury by making her wear a hat presumably so that nobody would report the injury to DCFS. And the juvenile court found that mother coached her children to lie to authorities.

Mother successfully encouraged her children to lie. And mother lied at every opportunity. The juvenile court gave great weight to those facts as indicators of a "lack of insight and protective capacity." We agree with the juvenile court.

#### **B. Mother's Abusive Relationship**

Mother contends there is insufficient evidence to support the juvenile court's jurisdictional findings based on boyfriend's domestic violence. Mother claims that the domestic violence occurred more than two years before the jurisdictional hearing and that there was no other basis for the juvenile court's determination that the children are at risk of physical harm because of mother's continued interactions with boyfriend. Mother's argument ignores the evidence in the record that it is *her behavior* that continues to draw boyfriend to the home and to place the children in potentially dangerous situations.

Boyfriend is violent. Mother has a restraining order against boyfriend that expires in 2026 because boyfriend attacked mother and injured her face. As recently as the spring and

summer of 2018, and after boyfriend was imprisoned for his actions toward mother and deported, he tracked down mother and father and acted out with violent threats against both of them.

The record suggests that the reason boyfriend continues to show up at mother's home is because mother is still in contact with him. Mother has told father that she wants to move to another state to be with boyfriend, and wants to take Isaac with her when she does so. The evidence in the record, then, is that mother continues to place the children in jeopardy and wants to place Isaac directly in the line of boyfriend's violence by moving into his proximity and removing any of the current barriers to his violence. That is sufficient evidence to support the juvenile court's jurisdictional finding, and we affirm.

#### **DISPOSITION**

The juvenile court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.\*

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\* Associate Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.